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June 13, 1997

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**VIA HAND DELIVERY**

Mr. William F. Caton  
Acting Secretary  
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1919 M Street, N.W.  
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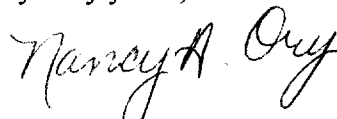
Re: MM Docket No. 87-268

Dear Mr. Caton:

On behalf of Ramar Communications, Inc., I am transmitting herewith an original and nine copies of its Petition for Partial Reconsideration of the Commission's Sixth Report and Order, FCC-97-115 (released April 21, 1997) in the above-referenced proceeding.

Should there be any questions concerning this matter, please contact the undersigned.

Very truly yours,



Nancy A. Ory

Enclosures

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BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C. 20554

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JUN 13 1997

Federal Communications Commission  
Office of Secretary

In the Matter of

Advanced Television Systems  
and Their Impact Upon the  
Existing Television Broadcast  
Service

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MM Docket No. 87-268

To: The Commission

## PETITION FOR PARTIAL RECONSIDERATION OF THE SIXTH REPORT AND ORDER

Ramar Communications, Inc. ("Ramar"), by its attorneys and pursuant to Section 1.429 of the Commission's Rules, hereby seeks partial reconsideration of the Sixth Report and Order, FCC 97-115, released April 21, 1997 ("Sixth R&O") in the above-captioned proceeding.<sup>1</sup>

In support whereof, the following is shown:

After reaffirming the Commission's commitment to provide DTV allotments that replicate the service areas of existing stations to ensure that broadcasters have the ability to reach the audiences that they now serve, the Sixth R&O adopts an implementing Digital Television ("DTV") Allotments/Assignments Table ("DTV Table"). Ramar supports the ongoing efforts by the Commission to facilitate the transition to DTV broadcasting, but seeks reconsideration of the rules adopted in the Sixth R&O in four critical respects. First, Ramar requests that the

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<sup>1</sup> Federal Register publication of the Sixth R&O occurred on May 14, 1997. This petition is therefore timely filed under Section 1.4(b) (1) of the Rules.

Commission provide an additional 90 days after the release of the FCC's computer software and Office of Engineering and Technology Bulletin No. 69 ("OET Bulletin No. 69") in order to permit Ramar to fully assess the degree to which the channels and antenna height and power combination assigned to it in the DTV Table will in fact replicate the service areas of its existing stations. Ramar urges the Commission to provide Ramar an opportunity to propose limited revisions to the DTV Table so as to avoid any loss of television service. Second, the Commission should make clear that core spectrum should include channels 47-51. Third, Ramar requests that the rules be revised to provide existing NTSC stations for which facility modification applications were on file prior to the adoption on July 25, 1996 of the Sixth Further Notice of Proposed Rulemaking, 11 FCC Rcd 10968 (released August 14, 1996) ("Sixth FNPRM"), the same treatment as applications granted before April 3, 1997. Fourth, the Commission should extend DTV conversion protection to construction permit applicants who filed their applications prior to September 20, 1996. Adoption of Ramar's proposed reconsideration of the rules adopted in the Sixth R&O will ensure a consistent and equitable transition to the DTV era.

**I. THE COMMISSION SHOULD PROVIDE RAMAR WITH THE INFORMATION NEEDED TO ENSURE THAT DTV ALLOTMENTS REPLICATE ITS SERVICE AREAS**

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In order to facilitate effective DTV implementation, the Commission should release the computer software utilized in compiling the DTV Table and OET Bulletin No. 69 and thereafter provide Ramar with a reasonable time period in which to evaluate the coverage areas and interference predicted by the Commission in the DTV Table. In the absence of such

information and without sufficient time to assess the adequacy of relevant stations' assigned power and antenna heights, Ramar is unable to make a reasonable determination that the DTV Table adopted in the Sixth R&O meets the goal of replication of its service areas.

A comparison of the DTV Table proposed in the Sixth FNPRM and the DTV Table adopted in the Sixth R&O indicates that the Commission's calculation of service area replication for Ramar's two existing full power stations may be incorrect. First, Ramar is the licensee of Station KJTV, operating on NTSC Channel 34 in Lubbock, Texas. In the Sixth FNPRM, KJTV was proposed to be allotted DTV Channel 35 with a DTV power of 217.1 kW and an antenna height of 256.0 meters. The proposed allotment was predicted to cover 14,941 square kilometers and 294,000 persons, theoretically resulting in one hundred percent (100%) replication of KJTV's NTSC service area. In the Sixth R&O, however, KJTV was allotted DTV Channel 35 with a DTV power of only 115.8 kW at the same antenna height, a power reduction of nearly 47 percent. According to the DTV Table, this allotment is predicted to cover 15,056 square kilometers and 295,000 persons, again theoretically resulting in 100% replication of KJTV's service area. Under sound engineering principles, however, a decrease in power at the same antenna height generally equates with reduced, not increased coverage area. This problem is exacerbated by the fact that the power allotted to DTV Channel 35 is approximately 11.6 % of that provided to three of KJTV's in-market competitors (DTV Channels 39, 44 and 40 in Lubbock were provided with 1000.0 kW of power at similar antenna heights (226, 232 and 268 meters, respectively)). In the absence of access to the FCC's computer software and OET Bulletin No. 69, Ramar cannot make a reasonable assessment of whether it is being treated

equitably consistent with Commission goals, and how to propose equitable modifications.

A comparison of the proposed and adopted DTV Table for Ramar's other television station yields similar results. Ramar is the licensee of Station KASY, operating on NTSC Channel 50 in Albuquerque, New Mexico. In the Sixth FNPRM, KASY was proposed to be allotted DTV Channel 49 with a DTV power of 97.8 kW and an antenna height of 1276.0 meters. The proposed allotment was predicted to cover 34,693 square kilometers and 738,000 persons, resulting in one hundred percent (100%) replication of KASY's NTSC service area. In the Sixth R&O, however, NTSC Channel 50 was allotted DTV Channel 51 with a DTV power of only 50.0 kW at the same antenna height, a reduction of nearly 49 percent. According to the DTV Table, this allotment is predicted to cover 33,030 square kilometers and 736,000 persons, still resulting in 100% replication of KASY's service area. Again, sound engineering principles would appear to undermine the Commission's successive conclusions that KASY operations with 97.8 kW and 50 kW power will produce essentially the same coverage.

The FCC's computer software and OET Bulletin No. 69 information will provide the vital information licensees need to evaluate the DTV Table intelligently. Without this material and adequate time for Ramar's engineers to analyze their channel assignments in the DTV Table, Ramar is unable to determine whether its two DTV assignments and power/height combinations are equitable. To avoid the need for time-consuming petitions for rulemaking to amend the DTV Table channel-by-channel and to speed the introduction of DTV, the

Commission should take steps to correct errors in the table in this reconsideration phase by providing an additional 90 days after the release of its software and OET Bulletin No. 69 to allow for revisions to the DTV Table in limited situations.

**II. THE DTV CORE SPECTRUM SHOULD INCLUDE CHANNELS 47-51**

In the Sixth R&O, the Commission adopted a DTV Table based on the use of channels 2-51, with the caveat that if channels 2-6 prove acceptable for DTV use, the Commission will consider recapturing channels 47-51, reducing the DTV core spectrum to encompass channels 2-46, rather than channels 2-51. Sixth R&O at ¶83. Ramar believes that it is important to allocate as much core spectrum as possible to facilitate achievement of the critically important goal of providing high quality DTV service to all viewers. If after testing, channels 2-6 prove to be acceptable for DTV use, the Commission should retain channels 2-6, but not at the expense of channels 47-51. By establishing the DTV core spectrum as encompassing channels 2-51 for the transition period, but holding out the possibility that licensees using channels 2-6 or 47-51 may be required to move, the Commission is potentially placing unnecessary technical burdens and expense on stations whose DTV allotments are at either end of the core spectrum allocation.

**III. FACILITY MODIFICATION APPLICATIONS FOR EXISTING NTSC STATIONS FILED BEFORE JULY 25, 1996 SHOULD BE FULLY CREDITED IN THE DTV TABLE, NOT CONDITIONED ON FUTURE DTV ALLOTMENTS**

In the Sixth R&O, the Commission stated that it was able to accommodate all of the eligible broadcasters with DTV allotments that would not conflict with any of the

authorizations to modify existing NTSC facilities that have been granted subsequent to July 25, 1996 (the date of adoption of the Sixth FNPRM) and before the adoption of the Sixth R&O on April 3, 1996. Sixth R&O at ¶ 113. As to pending or future facilities modification applications, the impact on DTV allotments will be a factor in deciding whether to grant such applications. Id. Thus, facilities modification applications which were on file prior to July 25, 1996, but which were not granted prior to the adoption of the Sixth R&O are in effect conditioned on the outcome of the DTV proceedings, and are not afforded the same treatment as applications that happened to be granted prior to the adoption of the Sixth R&O.

Ramar respectfully submits that all applications on file on or before July 25, 1996 should receive the same treatment.<sup>2</sup> In many cases, such as Ramar's, the modification application proposes a substantial improvement in facilities that will provide clear public interest benefits. The FCC should not relegate such applications to an ambiguous future where facilities improvements may be lost and grants may be effectively revoked. It is unfair to permit a station's DTV future to be dependent on the speed of FCC processing. Accordingly, the Commission should process all applications filed prior to July 25, 1996 without conditioning the grant of any of these applications on the outcome of the DTV proceeding. In addition, any such applications should be fully accommodated in the DTV Table. The Commission should adhere to a consistent policy that treats similarly situated applicants in a fair and equitable fashion. See Melody Music v. FCC, 345 F. 2d 730 (D.C. Cir. 1965).

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<sup>2</sup> Ramar filed such an application, on July 11, 1996, to modify the facilities of Station KJTV, Lubbock, Texas (FCC File No. BPCT-960711LM). That application is pending.

**IV. THE COMMISSION SHOULD MAKE REASONABLE  
ACCOMMODATIONS TO EXTEND DTV CONVERSION PROTECTION  
TO CONSTRUCTION PERMIT APPLICANTS WHO FILED THEIR  
APPLICATIONS PRIOR TO SEPTEMBER 20, 1996**

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In the Sixth FNPRM, the Commission announced its general intention to cease to accept applications for new NTSC stations, but made clear that it would process applications for new NTSC stations that were on file prior to 30 days after the publication of the Sixth FNPRM in the Federal Register, a deadline which turned out to be September 20, 1996. In the Sixth R&O (at ¶ 112), the Commission states that it will maintain and protect vacant NTSC allotments that are the subject of pending applications or rulemakings, while avoiding the creation of new DTV allotments that would conflict with such proposed new NTSC stations. The Commission makes no mention, however, of the accommodation of new NTSC construction permittees in the DTV world. At present, an NTSC permittee whose application for construction permit for a NTSC facility was on file by September 20, 1996 has no assurance that it will eventually receive a DTV allotment. However, substantial public policy considerations demand that such new permittees should not be forced to order equipment and construct facilities with no certainty as to the long-term viability of their new stations in the DTV world.

In order to avoid sentencing new NTSC permittees to forced obsolescence, the Commission should make clear that the digital conversion rights of new NTSC permittees are of the highest priority and that the Commission will be flexible and adaptive with individual permittees, thereby allowing them to construct their new stations with the knowledge that a DTV allotment will be available in the future. Although Ramar recognizes the difficulty the



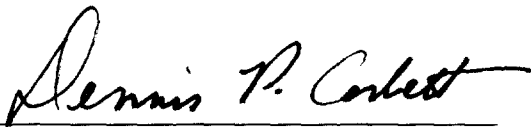
Commission faces in making a DTV allotment today on the basis of pending NTSC applications (e.g., competing applications propose varied technical specifications, the DTV construction deadlines established for existing broadcasters make no sense for applicants who do not yet know when they might hold a permit), the Commission should make clear now that new NTSC permittees will participate in the transition to DTV. Ramar suggests that it may make sense for new NTSC permittees who receive their permits early enough in the DTV transition process to be assigned a DTV channel and permitted to participate in the DTV transition process. It may also be advisable to allow new NTSC permittees who receive their permits later in the DTV transition process to build a DTV facility rather than construct an obsolete NTSC facility. The governing principle should be flexibility, with the overall goal being the protection of new NTSC permittees' right to convert to DTV under reasonable circumstances.

**CONCLUSION**

For the reasons set forth above, Ramar respectfully requests partial reconsideration of the Sixth R&O.

Respectfully submitted,

RAMAR COMMUNICATIONS, INC.

By: 

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June 13, 1997

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